

REMARKS

Applicants gratefully acknowledge the Examiner's indication that Claims 11, 13-17, 20, and 21 are allowable. Applicants, however, believe that Claim 12 is also allowable, as will be addressed.

Applicants also acknowledge withdrawal of Claims 18 and 19 from consideration and have canceled these claims. Applicants note by way of comment that their previous Amendment dated October 21, 2008, had inadvertently identified Claims 18 and 19 as new when in fact they had previously been presented in the Preliminary Amendment. Applicants submit that this minor error has no effect on their reservation of the right to file one or more divisional applications directed to the canceled subject matter.

Rejections under 35 U.S.C. 102

Claim 12 stands rejected under 35 U.S.C. 102(b) as being anticipated by (1) the cited article by Huang et al, *Huaxue Xuebao*, 41(8), 723-729 (1983) and (2) the cited article by Kitazume et al appearing in *J. Fluorine Chem.*, 56, 271-284 (1992). Applicants respectfully traverse.

Applicants acknowledge that the Huang et al article at page 723 discloses a reaction of $\text{CF}_2\text{CICO}_2\text{C}_2\text{H}_5$ and CH_3OOR in the presence of ethoxide produces $\text{CF}_2\text{CICO}_2\text{CH}_2\text{COR}$ (where R has the various meanings shown in the reference under the reaction scheme). Applicants also acknowledge that the Kitazume et al article at page 278 teaches the conversion of $\text{CF}_2\text{X}-\text{CO}-\text{OEt}$ in the presence of a lithium amide base to $\text{CF}_2\text{X}-\text{CO}-\text{CH}_2-\text{CO}-\text{OEt}$ (where X is H or Cl). In fact, Applicants specifically discloses these references for that purpose in their specification at page 4, lines 14 et seq (where the Chemical Abstracts reference refers to the Huang et al article). However, Claim 12 is not a stand-alone claim but instead adds a further limitation to the process specified in allowable independent Claim 11. That is, Claim 12 further limits Claim 11 by specifying that the starting alkyl ester 4-chloro-4,4-difluoroacetoacetic acid of formula (II) is obtained not by any conceivable method known in the art but by a specific type of preparative process. This is conceptually no different from specifying a solvent, a temperature, or any other limiting reaction condition. In short, Applicants submit that Claim 12, because it is dependent on an allowable claim and simply adds a further limitation to that claim, is also allowable.

Applicants therefore respectfully submit that Claim 12 is not anticipated by either the Huang et al article or the Kitazume et al article.

In view of the preceding amendments and remarks, allowance of the claims is respectfully requested.

Respectfully submitted,

By Richard E. Henderson
Richard E. L. Henderson
Attorney for Applicants
Reg. No. 31,619

Bayer CropScience LP
2 T.W. Alexander Drive
Research Triangle Park, NC 27709
Ph.: (919) 549-2183
Fax: (919) 549-3994
Q:patents/prosecution documents/cs8710/8710 amendment 2-17-09